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In re Application of :
Yoshiki Hirano et al. : DECISION ON REQUEST FOR
Application No. 10/658,392 : RECONSIDERATION OF
Filed: September 10, 2003 : DECISION ON APPLICATION
Atty. Dkt. No.: 1033897-000002 : FOR PATENT TERM ADJUSTMENT

This is a decision on the "Request for Reconsideration of Decision on Application for Patent Term Adjustment" filed January 30, 2007. Receipt of the status letter filed May 11, 2007 is acknowledged. Patentee requests that the patent term adjustment determination under 35 U.S.C. 154(b) in the decision of December 14, 2006 be changed from zero (0) days to four hundred eighty-two (482) days.

The request for reconsideration of the decision of December 14, 2006 is granted; however, the request for reconsideration is **DISMISSED**.

Patentee is given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On April 24, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) of 0 days in the above-identified application. On June 23, 2006, patentee filed an application for patent term adjustment asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is 236 days, including zero days of applicant delay and two hundred thirty-six (236) days of Office delay.

By decision mailed December 14, 2006, the Office granted the application for patent term adjustment to the extent that the period of applicant delay of 603 days was removed. Patentee had

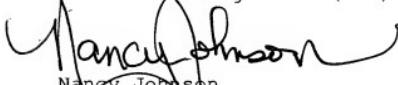
not received the Office action and thus, no reduction for taking in excess of three months to reply to it was warranted. However, with respect to entering a period of adjustment of 236 days for Office delay, the Office determined no such entry was warranted as the record supported a conclusion that the Office action was properly mailed to the correspondence address of record.

On request for reconsideration, patentee argues that the return of the Office action by the postal service was due to Office error and not postal service error.

Patentee's arguments have been considered, but not found persuasive. The re-mailing of the Office action does not constitute a delay by the Office within the meaning of 35 U.S.C. 154(b). The application was filed on September 10, 2003. A first Office action was mailed to applicants at Post Office Box 1404, Alexandria VA 22313-1404 on April 21, 2004. This was within fourteen months of the filing date of the application, September 10, 2003. Thus, there was no Office delay within the meaning of 37 CFR § 1.702(a)(1). Patentee's evidence does not overcome the conclusion that the Office action was properly mailed to the correspondence address of record. Patentee's evidence does not establish Office error or Office delay.

In view thereof, the patent properly issued with a revised patent term adjustment of one hundred twenty-five (125) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
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